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**Commonwealth of Virginia**

**RESPONSE TO PETITION FOR RULEMAKING**

Check one: ☒ **Initial Agency Notice**   ☐ **Agency Decision**

**Regulatory Coordinator:** Cindy M. Berndt

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**Agency Name:** State Water Control Board

**Chapters affected:**

<b>VAC No.</b> <i>(e.g., 4 VAC 20-490):</i>	<b>Chapter Name</b> <i>(e.g., Regulations Pertaining to Sharks):</i>
9 VAC 25-720	Water Quality Management Planning Regulation

**Statutory Authority:** State mandate in the Code of Virginia, §62.1-44.15, is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

**Name of petitioner:** Edward J. O'Brien, President, Boston Water & Sewer Company

**Nature of petitioner's request:** Amend the Water Quality Management Planning Regulation (9 VAC 25-720), within section 70.C, to include total nitrogen and total phosphorus allocations for the Boston Water & Sewer Company's proposed wastewater facility (VPDES Permit No. 0088749). The permit, first issued in 1995 (reissued in 2000 and 2005), contains flow tiers of 0.075, 0.15, 0.25 and 0.45 million gallons per day (MGD). The plant will be initially constructed for 0.25 MGD capacity, scheduled to commence operating in the third quarter of 2008. The new facility will replace an existing 0.015 MGD plant (VPDES Permit No. 65358).

**INITIAL AGENCY NOTICE**

**Agency's plan for disposition of the request:** Public-notice receipt of the petition and provide for a 21-day public comment period. Upon close of the public comment period, review any comments received and then make a decision to either initiate a rulemaking or place the petition on the Board's next meeting agenda for their consideration.

**Comments may be submitted until** October 10, 2006

**AGENCY DECISION**

☐ **Request Granted**

☒ **Request Denied**

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**Statement of reasons for decision:** The Board denied the petition, based on the following factors:

- 1. The Boston W&S facility was a non-significant discharger during the rulemaking for nutrient discharge control regulations. Therefore, it was not assigned nutrient waste load allocations.**
- 2. The proposed facility expansion to 0.45 MGD is still below the threshold for a significant discharger, and remains ineligible for assignment of nutrient waste load allocations.**
- 3. As a result, the facility is considered an expanding non-significant discharge and per Virginia Code §62.1-44.19:15.A. 2, Boston W&S must:**
  - acquire waste load allocations sufficient to offset any increase in the delivered nutrient loads resulting from the expansion beyond the permitted capacity as of July 1, 2005;**
  - at a minimum, install biological nutrient removal technology at the time of the expansion.**

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**Agency Contact for Further Information:**

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**Date Submitted:** 01/07/2007

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